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Supreme Court, U.S.
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No. 07-1355

IN THE

Supreme Court of the United States

THE VILLAGE OF MUNDELEIN, ILLINOIS,
Petitioner,

v.

WISCONSIN CENTRAL RAILROAD,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a municipal ordinance prescribing th amount of time that trains may block highway-grad crossings is preempted by the Federal Railroa Safety Act (FRSA), codified at 49 U.S.C. § 2010 (2000 & Supp. 2004).

STATEMENT PURSUANT TO RULE 29.6

Respondent Wisconsin Central Ltd. is a wholly owned subsidiary of Wisconsin Central Transportation Corporation, which is a wholly owned subsidiary of Grand Trunk Corporation, which is a wholly owned subsidiary of Canadian National Railway Company, a publicly traded company. No publicly held company owns more than ten percent of the stock of Canadian National Railway Company.

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INTRODUCTION

Respondent Wisconsin Central Ltd. ("Railroad") submits this brief in opposition to the petition for a writ of certiorari filed by the Village of Mundelein, Illinois ("Village").

There is no significant conflict among state and federal courts on the question of whether local laws limiting the time that a train may block a highway-grade crossing are preempted by FRSA. The Village candidly concedes that "few" courts have ever reached the question, see Pet. 19, and only the decision below has addressed the issue since the FRSA preemption provision was amended in late 2007. In any event, all decisions (save one from an intermediate state appellate court) have found such laws preempted, as the Illinois Supreme Court unanimously did here. The Village tries to enhance the alleged conflict by reciting slight differences in various courts' articulation of the test for FRSA preemption, but such differences in phraseology are of no moment where, as here, courts routinely find a particular type of regulation preempted under a federal statute.

Preemption in this case also follows inexorably from this Court's decisions addressing FRSA preemption and comports with Congress's desire to avoid a patchwork system of railroad-safety regulation and enforcement across the country. Local regulation is particularly inappropriate in this setting. Railroads have no economic or other incentive to block rail crossings. To the contrary, they have strong incentives to keep rail traffic moving except, as here, where necessary for safety reasons. The Village's attempt to punish the Railroad for failing to move quickly to resolve a safety

concern presents no issue warranting this Court's review.

COUNTER STATEMENT OF THE CASE

1. The following account of the underlying facts is undisputed. On the morning of January 17, 2005, respondent Wisconsin Central Ltd.'s train #A442 stopped for a crew change on its way from Fond du Lac, Wisconsin to Schiller Park, Illinois. Pet. App. 2a. Conductor Bernard Kareka and an engineer assumed control of the train in Lake Villa, Illinois. *Id.* The two men learned from a note left by the previous crew that the train had experienced problems with its air brakes, but believed that the brakes had been repaired. *Id.* 3a. They nonetheless conducted tests of the air-brake system, including a "set and release test," to ensure that the air pressure in the system complied with governing federal regulations. *Id.* As a crew taking over a train already en route, the men were not required to, and did not, perform a complete visual inspection of the train or a full battery of tests. *Id.*

As the train moved south, an alarm known as a "hot box detector" alerted the crew that the rear car of the train had equipment dragging from it. Pet. App. 3a-4a. The engineer then began to reduce the train's speed. *Id.* 4a. But when he did so, the brake pressure plummeted, activating the emergency braking system and bringing the train to a rapid stop. *Id.* Kareka discovered two brake-related problems during an ensuing visual inspection: a damaged angle cock and a broken drawbar at the end of one car. *Id.* The latter problem had caused the rear section of the train to separate from the forward portion. *Id.*

In response, the crew placed the car with the broken drawbar on another track, left the separated

rear portion at a location where it would not block a grade crossing, and then reversed the train in order to reconnect the front and rear portions of it. Pet. App. 5a. The crew at that point retested the brakes and, after restoring the air pressure to the level required by federal regulations, moved the train to a location where they could remove the rear car that had activated the hot box detector in the first place. *Id.*

It was during the stop at this location that the train obstructed the Hawley Street crossing in the Village of Mundelein. Pet. App. 5a. Kareka was able on two occasions to separate train cars so that passengers disembarking from a commuter train could reach the nearby parking lot. *Id.* But the crew, which was obliged under federal law to perform another air pressure test on the brake system, was unable to restore the system to the requisite levels for the rear portion of the train. *Id.* Respondent's dispatcher eventually ordered the crew to proceed to Schiller Park with the front portion of the train, leaving the rear portion to be taken there by another train. *Id.* 6a. The train obstructed the Hawley Street crossing for a total of 157 minutes. *Id.*

2. The Village issued the Railroad a citation for violating its Ordinance 89-4-12 § 1(A) (1989), which bars rail carriers from "obstruct[ing] public travel at a railroad-highway grade crossing for a period in excess of 10 minutes," except where the train in question "is continuously moving or cannot be moved by reason of circumstances over which the rail carrier has no reasonable control." Pet. 3-4.[1] (quoting 625 Ill. Comp. Stat. 5/18c07402(1)(b) (West 2004)).

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[1] As the courts below explained, the Village has adopted as its own laws the pertinent provisions of the Illinois Motor Vehicle

A bench trial was conducted on the Railroad's two main defenses to the citation: that the blockage of the Hawley Street crossing was due to circumstances beyond the Railroad's control and that, under the facts of this case, enforcement of the Village ordinance was preempted under FRSA. Pet. App. 55a-56a. The trial court rejected both defenses, upholding the citation and the accompanying $14,000 fine. *Id.* 56a.

3. The Railroad renewed its two defenses on appeal. Its principal argument was that FRSA's preemption clause bars enforcement of the ordinance under the facts and circumstances presented. Br. of Defendant-Appellant at 2, 3, 13, 14, 19, 24, *Vill. of Mundelein v. Wis. Cent. R.R.*, 855 N.E.2d 230 (No. 2-05-0492) (Ill. App. Ct. 2006).

The Appellate Court of Illinois held the ordinance preempted and thus unenforceable not only in the circumstances presented, but in all circumstances. Pet. App. 45a. Applying the analytical framework established by this Court in *CSX Transportation, Inc. v. Easterwood*, 507 U.S. 658 (1993), the appellate court concluded that the ordinance fell within FRSA's express preemption clause because the ordinance "'relate[d] to' railroad safety" and because federal regulations on train speed and train length "covered" the same subject matter as the ordinance. Pet. App. 33a-44a. The Village's ordinance was not preserved by the savings clause, the court also found, because that clause applies by its terms only to laws, regulations, and orders issued by "[a] State." *Id.* 47a-49a.

Code, including the state blocked-crossing statute. *See* Pet. App. 10a, 36a (citing Mundelein Municipal Code § 10.20.010 (1989)).

4. The Illinois Supreme Court granted the Village's petition for review and unanimously affirmed. The state supreme court followed the framework set forth in *Easterwood* and this Court's subsequent decision in *Norfolk Southern Railway v. Shanklin*, 529 U.S. 344 (2000). The court first found that the ordinance related to railroad safety and thus fell "within the scope" of FRSA's preemption clause. Pet. App. 11a. Examining the "context and plain language of the ordinance," the court next determined that federal regulations on train speed, air-brake testing, and grade-crossing safety "substantially subsume the subject" matter of the local ordinance, which the court interpreted as "the movement of trains at grade crossings." *Id.* 14a-17a. The court explained that inferring preemption from more than just a single regulation was consistent with *Easterwood*, where this Court had found preemption on the basis of a set of related regulations and the structure of the regulatory scheme. *Id.* 16a-17a (citing *Easterwood*, 507 U.S. at 674, and *Burlington N. & Santa Fe Ry. v. Doyle*, 186 F.3d 790, 795 (7th Cir. 1999)).

Finally, the Illinois Supreme Court rejected the argument that the ordinance could be preserved by FRSA's savings clause. That clause saves only state laws that are directed at a specifically local safety hazard, that are compatible with federal law, and that do not burden interstate commerce unreasonably. 49 U.S.C. § 20106. The court declined to pass, as the appellate court had done, on the question of whether the savings clause applies to municipal laws, noting "considerable uncertainty" on that point. Pet. App. 21a. But the court affirmed on the alternative grounds that the ordinance was incompatible with the federal regulations governing train speed and air-brake testing and, because it had

the effect of regulating the length of trains, violated the Commerce Clause under *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 775 (1945). Pet. App. 21a-24a.

REASONS FOR DENYING THE PETITION

The unanimous decision of the Illinois Supreme Court does not warrant this Court's review. That decision faithfully and correctly applied this Court's FRSA preemption precedents. The decision accords, moreover, with an all but unanimous body of federal and state decisional authority finding local laws regulating the amount of time a train can block a highway-grade crossing are preempted under FRSA. Neither a lone intermediate state appellate decision to the contrary nor slight variations in the way courts phrase the FRSA preemption test creates any reason for further review. The safety concerns raised by the Village and its *amici* are exaggerated and in any event inadequate by themselves to justify certiorari.

I. THE ILLINOIS SUPREME COURT'S UNANIMOUS DECISION PRESENTS NO CONFLICT WORTHY OF REVIEW.

A. The Decision Below Is Consistent With This Court's Precedents.

The Village's principal argument is that the ruling of the Illinois Supreme Court "conflicts [with] this Court's preemption teachings." Pet. 14. According to the Village, this Court's decisions in *Easterwood* and *Shanklin* required the Illinois Supreme Court to conduct a case-specific and "in-depth analysis" of the statutory term "railroad safety," and "impliedly recognized that the FRSA only applies to state and local government laws designed to improve railroad safety." Pet. 15. The Village also insists that the *Easterwood* Court's construction of the term

"covering" requires some heightened form of specificity that cannot be achieved by a set of federal regulations that together govern the particular subject matter. *Id.* 17.

The Village misreads *Easterwood*. As an initial matter, this Court did not insist upon "in-depth analysis" of the term "railroad safety" in every preemption case. Pet. 15. The Court instead recognized that the phrase "relating to railroad safety" is sweeping and concluded in just one sentence that "[l]egal duties imposed on railroads by the common law fall within the scope" of that capacious phrase. 507 U.S. at 664 (citing *Morales v. Trans World Airlines*, 504 U.S. 374, 383-84 (1992), for the proposition that a "statute's use of 'relating to' confers broad pre-emptive effect").

There was also no "recogni[tion]" in *Easterwood*, either explicit or implicit, that FRSA's preemption provision applies only to state and municipal laws that are intentionally "designed to improve railroad safety." Pet. 15. This Court placed no such gloss on the statute in the ten-page span of the opinion that the Village cites. *Id.* Indeed, the Court addressed the issue of regulatory purpose only in *rejecting* the argument that the purpose underlying federal regulations figures into the preemption analysis at all. *See Easterwood*, 507 U.S. at 675 (FRSA's preemption clause "does not . . . call for an inquiry into the Secretary's purposes, but instead directs the courts to determine whether regulations have been adopted that in fact cover the subject matter of train speed"). The *Easterwood* Court's refusal to be guided by a regulation's professed purpose, as the Illinois Supreme Court pointed out, placed *Easterwood* in line with the Court's preemption precedents outside of the FRSA context, which likewise examine "the

effects of the [state] law," not its purpose. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 105 (1992); *see* Pet. App. 15a.

Nor does *Easterwood* support the cramped reading of the term "covering" that the Village urges. To be sure, the Court has interpreted this statutory term as requiring the proponent of preemption to "establish more than that [the federal regulations] 'touch upon' or 'relate to' th[e] subject matter"; the party must show that "the federal regulations substantially subsume the subject matter of the relevant state law." *Easterwood*, 507 U.S. at 664. But the *Easterwood* Court did not, as the Village suggests, mandate a reading of federal regulations so "narrow" as to limit preemption to those instances where there is a single, on-point federal regulation. Pet. 17. The Court did just the opposite -- it looked beyond the "face" of the federal regulations at issue (which set maximum speed limits depending on the type of train track) and examined both "related safety regulations" and "the overall structure of the regulations" in finding preemption. 507 U.S. at 674.

The Illinois Supreme Court applied each step of the analysis required under *Easterwood* and reached a result fully consistent with that decision. The state court first asked whether the ordinance qualified as a law "relating to" railroad safety. Pet. App. 11a; *Easterwood*, 507 U.S. at 664. The court concluded that the ordinance, which appeared under the heading "Safety Requirements for Railroad Operations,"[2] satisfied the phrase "relating to" as construed by this Court. Pet. App. 11a. The state

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[2] The quoted heading is the one in the Illinois Motor Vehicle Code, the provisions of which the Village has adopted as its own. *See supra* at 4 n.1.

court then carefully defined the "subject matter" of the ordinance as "the movement of trains through grade crossings." *Id.* 14a. Applying the *Easterwood* Court's reading of the statutory term "covering," the state court held that federal regulations "substantially subsume" that subject matter. *Id.* 15a. The court reached this conclusion after considering, as had this Court in *Easterwood*, not just a single federal regulation, but "related safety regulations and the overall structure of the regulations." *Id.* 16a (citing *Easterwood*, 507 U.S. at 674, and *Burlington N. & Santa Fe Ry.*, 186 F.3d at 795). Again as in *Easterwood*, the Village could not avoid that result simply by arguing that its law and the federal regulations were directed at different objectives, for the preemption inquiry turned on the effect of the laws, not their professed purposes. Pet. App. 14a-15a; *see Easterwood*, 507 U.S. at 675. Simply put, *Easterwood* and the ruling below are in complete harmony.

The Village's reliance on two conflict-preemption cases is similarly misplaced. In both *Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982), and *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 130-31 (1978), this Court answered the distinct question of whether, in the absence of an express statutory provision, there was "an irreconcilable conflict between the federal and state regulatory schemes" sufficient to warrant preemption of the latter. *Rice*, 458 U.S. at 659. Here, by contrast, the state court held that the ordinance fell within the scope of FRSA's *express* preemption clause, and assessed the ordinance's compatibility with federal regulations only to decide whether the ordinance qualified for the "narrow exception to preemption" carved out by the savings clause. *See Duluth, Winnipeg & Pac. Ry. v.*

City of Orr, — F.3d — , 2008 WL 2467924, at *1 (8th Cir. June 20, 2008).[3] The Village bore the burden of showing that the savings clause applied, *id.* at *2, and the Illinois Supreme Court's correct conclusion that the Village had not carried its burden does not warrant review by this Court.

B. There Is No Conflict Among The Lower Courts In Need Of This Court's Resolution.

The Village urges certiorari to resolve a purely fanciful conflict among state and federal courts. That effort too misses the mark.

As the Illinois Supreme Court explained, its ruling accords with the overwhelming weight of federal and state decisional authority. Pet. App. 17a-18a. Two separate panels of the Sixth Circuit, no fewer than three federal district courts, and the highest courts of Pennsylvania and Washington have all concluded – the appellate courts without a single dissent – that state and local laws limiting the time that trains may block grade crossings are preempted under FRSA. *See CSX Transp., Inc. v. City of Plymouth*, 283 F.3d 812, 817 (6th Cir. 2002); *CSX Transp., Inc. v. City of*

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[3] It is noteworthy that the Village points to no conflict among the lower courts with respect to the third question presented in the petition. But this case is at all events a poor vehicle for reviewing that question because the Illinois Supreme Court's application of the savings clause can be affirmed on any number of grounds. That court did not even reach the sound basis on which the Appellate Court of Illinois had deemed the clause inapplicable – that the savings clause applies only to state laws, not municipal ones. Pet. App. 49a; *see also CSX Transp., Inc. v. City of Plymouth*, 86 F.3d 626, 628 (6th Cir. 1996). This and other compelling alternative grounds for affirmance counsel strongly against granting review on this question. *See The Monrosa v. Carbon Black Exp., Inc.*, 359 U.S. 180, 183 (1959).

Plymouth, 86 F.3d 626, 630 (6th Cir. 1996); *Lewis v. Norfolk S. Ry.*, No. 06-2724, 2008 U.S. Dist. LEXIS 46247, at *26 (W.D. Tenn. June 11, 2008); *CSX Transp., Inc. v. City of Mitchell*, 105 F. Supp. 2d 949, 952 (S.D. Ind. 1999); *Rotter v. Union Pac. R.R.*, 4 F. Supp. 2d 872, 874 (E.D. Mo. 1998); *Krentz v. Consol. Rail Corp.*, 910 A.2d 20, 35-36 (Pa. 2006); *City of Seattle v. Burlington N. R.R.*, 41 P.3d 1169, 1174-75 (Wash. 2002) (en banc); *see also Friberg v. Kansas City S. Ry.*, 267 F.3d 439, 443-44 (5th Cir. 2001) (holding that a state statute regulating the blockage of grade crossings was preempted by the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10501).

There is, as the Illinois Supreme Court acknowledged, one reported ruling to the contrary. In *State v. Wheeling & Lake Erie Railway*, 743 N.E.2d 513, 514 (Ohio Ct. App. 2000), an Ohio intermediate appellate court rejected a preemption challenge to a state statute that barred trains from blocking a crossing for more than five minutes. The sum total of the court's reasoning was that no federal regulation specifically governed "the length of time a stopped train can block a roadway." *Id.* at 514-15. Beyond that, the court based its ruling on an unpublished Ohio decision that had, prior to this Court's decision in *Easterwood*, rebuffed a *conflict* preemption challenge to the state statute in equally conclusory fashion. *Id.* (citing *State v. Chessie Sys. R.R.*, No. 2494, 1990 WL 1209 (Ohio Ct. App. Jan. 3, 1990)). This is not the stuff of certiorari. *See* Sup. Ct. Rule 10(b) (review may be warranted when

conflict involves decision by "a state court of last resort").[4]

The Village makes much of this alleged division of authority, Pet. 19-20, but concedes at the same time that "[t]here are few decisions examining blocked grade crossing laws." *Id.* 19. Even fewer courts – just the cases cited above – have answered the specific question of whether laws prescribing the amount of time trains may block grade crossings are preempted under FRSA. The upshot is that the question presented here is not a "recurring" one of great "importan[ce]," *id.*, but one that arises infrequently and has been treated with striking uniformity by federal and state courts.[5]

Nor can the Village leverage into a substantial conflict some trivial differences in the way courts

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[4] *In re Miamisburg Train Derailment Litig.*, 626 N.E.2d 85 (Ohio 1994), does not suggest that the Ohio Supreme Court would deviate from the federal and state decisional authority that soundly guided the Illinois appellate courts here. Pet. 22. The Ohio Supreme Court agreed in that case that the federal regulations at issue would bar the state from enacting laws or regulations, but drew a narrow "distinction between state regulation and common-law tort claims in this circumstance." 626 N.E.2d at 93. That decision has not been extended beyond the context of common-law torts, and except for the flawed *Wheeling* decision has not been applied to a blocked-grade-crossing law.

[5] Congress recently amended FRSA's preemption provision, 49 U.S.C. § 20106, and modified the standards for preemption. *See* Pub. L. No. 110-53, Title XV, § 1528, 121 Stat. 266, 453 (2007) (adding to 49 U.S.C. § 20106 a subsection "clarif[ying]" which state law causes of action for "personal injury, death, or property damage" Congress intended to preempt). That change does not affect this case, but it means that the Court will not be interpreting the language of the statute now in effect if it were to grant certiorari – which is reason enough to deny review.

have articulated the standard for FRSA preemption. Pet. 20-22 (citing *United Transp. Union v. Foster*, 205 F.3d 851, 860 (5th Cir. 2000), *Rushing v. Kansas City S. Ry.*, 185 F.3d 496 (5th Cir. 1999), *S. Pac. Transp. Co. v. Pub. Util. Comm'n*, 9 F.3d 807 (9th Cir. 1993)). According to the Village, these preemption decisions involving laws about train whistles "*narrowly* construe[d] federal regulations," whereas the Illinois Supreme Court construed the federal regulations in this case broadly. *See* Pet. 20. For starters, any variation between the precise phraseology employed by the Illinois Supreme Court and that used in the cited cases does not provide a basis for certiorari. This Court "reviews judgments, not statements in opinions," and certainly not the manner in which the lower courts recite a settled legal framework. *See, e.g., Johnson v. De Grandy*, 512 U.S. 997, 1003 n.5 (1994); *California v. Rooney*, 483 U.S. 307, 311 (1987) (per curiam).

Moreover, the opinions themselves make clear that these courts in fact applied the same fundamental approach as the Illinois Supreme Court. The Fifth and Ninth Circuits, like the court below, focused on the specific "subject matter" of the state regulations under review and asked whether the competing federal regulations "substantially subsume" that subject matter. *Compare* Pet. App. 15a-17a, *with Foster*, 205 F.3d at 860, 862, *and S. Pac. Transp. Co.*, 9 F.3d at 813. That the courts reached differing results is easily explained by the simple (and unexceptional) fact that the federal and state regulations at issue in the train-whistle cases were different in character and scope from those under review in the decision below. Indeed, while rejecting a preemption challenge to a state regulation on *when* the whistle must be sounded, the same Fifth Circuit

panel that supposedly construed federal regulations so "narrowly" held that FRSA preempted another section of the state statute regulating *what type* of whistle or horn trains must use. *Foster*, 205 F.3d at 861. A set of court rulings recognizing that FRSA preempts some state enactments but not others plainly does not warrant this Court's attention.

II. THE POLICY CONCERNS PRESENTED BY THE VILLAGE AND ITS *AMICI* PROVIDE NO BASIS FOR CERTIORARI.

The Village and its *amici* attempt to overcome the absence of an issue on which courts have disagreed by casting the Illinois Supreme Court as having definitively resolved a question of vast national importance and created a "regulatory void[]" that threatens public safety. Pet. 24; Br. of Am. Curiae 9. Their claim in this regard is predicated on incomplete information, is overstated, and provides no basis for certiorari.

As an initial matter, the Village misleadingly quotes the Federal Railroad Administration's ("FRA") statement that it "does not regulate the length of time a train may block a grade crossing." FRA, *Trains Blocking Highway-Rail Grade Crossings: Fact Sheet* (May 2008), *available at* http://www.fra.dot.gov/downloads/PubAffairs/FRA_Blocked_Highway_Rail_Grade_Crossing_Fact_Sheet.pdf. The FRA explains in the very next sentence that any rule imposing limits on "the amount of time a grade crossing may be blocked could have the undesirable effect of causing a railroad to violate other federal safety rules[,] such as when a train must be stopped in order to comply with regulations requiring that air brake tests be performed." *Id.* Of course, this was part of the reasoning that caused the Illinois

Supreme Court to find that the Village ordinance is preempted under FRSA. Pet. App. 17a.

There is likewise no merit to *amici*'s contention that the decision below produces "a bizarre result" at odds with Congressional intent. Br. of Am. Curiae 9. *Amici* suggest that Congress could not have intended to bar municipal regulation of the narrow area at issue absent a specific federal regulation on point. *Id.* What would be truly "bizarre," however, would be for Congress to prioritize national uniformity in one breath and then to sanction in the next a system under which trains traveling in interstate commerce are subject to a vast array of blocked-grade-crossing laws that vary not just from state to state, but from town to town. *See, e.g.*, Wis. Stat. § 192.292 (imposing ten-minute limit, except "outside of cities").[6] Indeed, Congress considered and explicitly rejected a patchwork system of state and local regulation and enforcement of the sort contemplated by *amici*. *See* H.R. Rep. No. 91-1194 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4104, 4109 ("The Committee does not believe that safety in the nation's railroads would be advanced sufficiently by subjecting the national rail system to a variety of enforcement in 50 different judicial and administrative systems."). Section 20106 and its predecessors thus asserted broad federal power while preserving an important yet greatly circumscribed role for local regulations to

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[6] It would be a regime where, for example, a train crossing the Louisiana/Mississippi border from west to east would see the time during which it could lawfully block a grade crossing drop from 20 minutes to five – or whatever other limit a particular Mississippi city, town, or village decided to impose. *See* La. Rev. Stat. Ann. § 48:391; Miss. Code Ann. § 77-9-235. *That* regime would indeed be "bizarre" and flatly at odds with Congress's goal of safety through national uniformity.

address genuinely local concerns. *See CSX Transp., Inc. v. Williams*, 406 F.3d 667, 672 (D.C. Cir. 2005) (per curiam); *Nat'l Ass'n of Regulatory Util. Comm'rs v. Coleman*, 542 F.2d 11, 14-15 (3d Cir. 1976). There is no room in that scheme for the Village's ordinance.

Finally, the widespread threat to public safety that the Village perceives defies both common sense and the economic realities of the industry. The Village and its *amici* paint a grim picture of the harm to children and the infirm they say is likely to result from crossings supposedly subject to obstruction simply because a train operator stops to "admire the scenery." Pet. 24. This case, it should go without saying, involves nothing of the sort; it does not implicate diverted emergency vehicles, children crawling over train tracks to reach a bus stop, or a delinquent train conductor pausing for hours on end "to have a smoke." *See id.* 20; Br. of *Amici Curiae* 6-8. The unfortunate delay here instead arose from the rare situation in which a railroad has an interest in blocking a grade crossing – where safety concerns require immediate attention before the train can be moved. But railroads normally have every economic incentive to keep their trains in motion. This Court does not lightly presume that companies act in an irrational manner directly contrary to their economic self-interest, *cf. Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588-89 (1986), and the Village and its *amici* have offered nothing to justify making such an unwarranted leap here.

Government regulation is not needed to ensure that a railroad will do all that it can to avoid and minimize blocking a grade crossing. What local regulation will do is create conflicting obligations on railroad employees to balance federal safety commands and local timing demands. This is

precisely what the express preemption provision in FRSA was intended to avoid. If the Village and other communities believe that the hazards posed by temporarily blocked grade crossings are grave, they should make the case to Congress and the Department of Transportation, not to this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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